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MONTANA LEGISLATIVE HISTORY

Chapter 564 19 93

Bill H 483 S _____ Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Highways & Transportation	
Hearing Date(s) Feb 11	✓ C	Hearing Date(s) Apr 06	✓ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out Feb 11	✓ C	Apr 06	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

H. Appropriations

Mar 03

Mar 12

Mar 15

3/10	PLACED ON CONSENT CALENDAR		
3/11	OBJECTION FILED TO CONSENT CALENDAR POSTING; BILL PLACED ON SECOND READING		
3/12	2ND READING PASSED	68	31
3/15	3RD READING PASSED	66	32
	TRANSMITTED TO SENATE		
3/18	FIRST READING		
3/18	REFERRED TO JUDICIARY		
3/25	HEARING		
3/30	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/31	2ND READING CONCURRED AS AMENDED	49	0
4/01	3RD READING CONCURRED	45	3
	RETURNED TO HOUSE WITH AMENDMENTS		
4/06	2ND READING AMENDMENTS CONCURRED	74	24
4/12	3RD READING AMENDMENTS CONCURRED	78	22
4/20	SIGNED BY SPEAKER		
4/21	SIGNED BY PRESIDENT		
4/22	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR CHAPTER NUMBER 523 EFFECTIVE DATE: 10/01/93		

HB 483 INTRODUCED BY TOOLE, ET AL.

REQUIRE MORE THAN ONE DUI TEST, UNLESS FIRST TEST IS FOR ALCOHOL AND IS FAILED

2/05	INTRODUCED		
2/05	REFERRED TO JUDICIARY		
2/05	FIRST READING		
2/11	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	2ND READING PASSED	71	25
2/19	TAKEN FROM ENGROSSING AND REREFERRED TO APPROPRIATIONS		
3/03	TABLED IN COMMITTEE		
3/16	COMMITTEE REPORT—BILL PASSED		
3/25	2ND READING PASSED	87	11
3/25	3RD READING PASSED	88	11
	TRANSMITTED TO SENATE		
3/26	FIRST READING		
3/26	REFERRED TO HIGHWAYS & TRANSPORTATION		
4/06	HEARING		
4/07	TABLED IN COMMITTEE		
4/13	COMMITTEE REPORT—BILL CONCURRED		
4/14	2ND READING CONCURRED	37	10
4/15	3RD READING CONCURRED	34	13
	RETURNED TO HOUSE		
4/21	SIGNED BY SPEAKER		
4/23	SIGNED BY PRESIDENT		
4/23	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR CHAPTER NUMBER 564 EFFECTIVE DATE: 10/01/93		

HB 484 INTRODUCED BY WISEMAN

FUND SCIENCE AND TECHNOLOGY PROJECTS WITH COAL TAX TRUST FUND

2/05	INTRODUCED		
2/05	REFERRED TO APPROPRIATIONS		

HOUSE BILL NO. 483

INTRODUCED BY TOOLE, FAGG

IN THE HOUSE

FEBRUARY 5, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
FEBRUARY 19, 1993	SECOND READING, DO PASS.
	ON MOTION, REREFERRED TO COMMITTEE ON APPROPRIATIONS.
FEBRUARY 20, 1993	ENGROSSING REPORT.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 17, 1993	PRINTING REPORT.
MARCH 25, 1993	SECOND READING, DO PASS.
	ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING.
	THIRD READING, PASSED. AYES, 88; NOES, 11.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 26, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON HIGHWAYS & TRANSPORTATION.
	FIRST READING.
APRIL 13, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 14, 1993	SECOND READING, CONCURRED IN.

APRIL 15, 1993

THIRD READING, CONCURRED IN.
AYES, 34; NOES, 13.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 16, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 483

INTRODUCED BY [illegible]

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON OPERATING A VEHICLE UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC CONSENTS TO MORE THAN ONE TEST FOR THE PRESENCE OF ALCOHOL OR DRUGS; PROVIDING THAT AN ALCOHOL TEST BE GIVEN FIRST AND THAT A DRUG TEST MAY NOT BE GIVEN IF THE ALCOHOL TEST IS FAILED; AND AMENDING SECTIONS 61-8-402, 61-8-403, 61-8-404, AND 61-8-405, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood, breath, or urine tests. (1) Any person who operates or is in actual physical control of a vehicle upon ways of this state open to the public ~~shall--be~~ deemed is considered to have given consent, subject to the provisions of 61-8-401, to a test or tests of ~~his~~ the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in ~~his~~ the person's body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two. The test or tests ~~shall~~ must be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which test or tests ~~shall--be~~ are administered. A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an alcohol concentration of 0.10 or more, a test for drugs may not be given.

(2) Any person who is unconscious or who is otherwise in a condition rendering ~~him~~ the person incapable of refusal ~~shall--be--deemed~~ is considered not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a driver under arrest refuses upon the request of a peace officer to submit to a test or tests designated by the arresting officer as provided in subsection (1), none ~~shall~~ a test may not be given, but the officer shall, on behalf of the department, immediately seize ~~his~~ the person's driver's license. The peace officer shall forward the license to the department, along with a sworn report that ~~he~~ the peace officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, and that the person had refused to

submit to the test or tests upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a test or tests:

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(6) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to a test or tests.

(7) All such suspensions are subject to review as hereinafter provided in this part."

Section 2. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. The department shall immediately notify any person whose license or

privilege to drive has been suspended or revoked~~,--as hereinbefore--authorized~~ in writing, and such the person ~~shall have~~ has the right to file a petition within 30 days ~~thereafter~~ after notice for a hearing in the matter in the district court in the county ~~wherein--such~~ in which the person resides or in the district court in the county in which this arrest was made. Such The court ~~is hereby--vested with~~ has jurisdiction and ~~it shall be its duty to~~ set the matter for hearing upon 10 days' written notice to the county attorney of the county ~~wherein~~ in which the appeal is filed, and such the county attorney shall represent the ~~state, and thereupon the~~. The court shall take testimony and examine into the facts of the case, except that the issues ~~shall~~ are be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, whether the person was placed under arrest, and whether such the person refused to submit to the test or tests. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension ~~as heretofore provided~~."

Section 3. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible -- conditions of admissibility. (1) Upon the trial of any criminal action or

other proceeding arising out of acts alleged to have been committed by any person in violation of 61-8-401 or 61-8-406:

(a) evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged, as shown by an analysis of ~~his~~ the person's blood, breath, or urine, is admissible; and

(b) a report of the facts and results of any test or tests of a person's blood, breath, or urine administered under 61-8-402 is admissible in evidence if:

(i) the breath test was performed by a person certified by the forensic sciences division of the department to administer breath tests or the blood or urine test was a laboratory analysis and the analysis was done in a laboratory operated by the department or by any other laboratory or facility certified or exempt from certification under the rules of the department; and

(ii) the test was on a blood sample, the person withdrawing the blood was competent to do so under 61-8-405(1).

(2) If the person under arrest refused to submit to the test or tests as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon

the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two."

Section 4. Section 61-8-405, MCA, is amended to read:

"61-8-405. Administration of tests. (1) Only a physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining any measured amount or detected presence of alcohol in the person. This limitation does not apply to the taking of breath or urine specimens.

(2) The person may, at ~~his~~ the person's own expense, have a physician or registered nurse of ~~his~~ the person's own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining any measured amount or detected presence of alcohol in the person at the time alleged, as shown by analysis of ~~his~~ the person's blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test or tests taken at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning the test or tests taken at the direction of the peace officer must be made available to ~~him~~ the person or ~~his~~ the person's attorney.

(4) ~~No~~ A physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse ~~shall~~ does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer ~~such~~ a test.

(5) If a test given under 61-8-402 or 61-8-806 is a test of urine, the person tested must be given ~~such~~ privacy in the taking of the urine specimen as that will ensure the integrity of the specimen and, at the same time, maintain the dignity of the individual involved.

(6) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary."

-End-

HEARING ON HB 483

Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Missoula, said this is a mandatory drug testing bill arising out of the fact that, under current law, the only DUI test available is the blood alcohol test. It is given on a machine called the intoxilizer or similar machines and measures the percentage of alcohol in a person's blood.

This bill provides a breath test to be administered first; if the person has a result of .10 or higher on that test, that is the only test that will be administered. If a person tests .10 or lower and is presumed to be under the influence of alcohol, the blood test will be performed after the breath test. In this situation, if the alcohol test comes back less than .10, but the officers who have made the arrests believe that there's a basis to test for drugs, they are allowed to do that.

Proponents' Testimony:

Peter Funk, Department of Justice, declared that, as long as the influence of drugs remains a crime in Montana, there should be some way for law enforcement to obtain evidence of that crime. The Department of Justice proposed amendments. **EXHIBIT 4**

Craig Hoppe, Montana Magistrates Association, stated that the MMA supports the bill and the amendments proposed by the Department of Justice.

Bill Fleiner, Board Member, Montana Sheriffs and Peace Officers Association, said the MSPOA asked **REP. TOOLE** to carry this bill on behalf of the Association.

Dr. G. Lee Meltzer and Dr. Phil Lively, Forensic Science, Department of Justice, answered questions for committee members regarding blood alcohol testing.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. BROOKE asked **Dr. Phil Lively, Forensics Science, Department of Justice**, how much blood tests cost. **Dr. Lively** explained that, to determine the cost of the test, a screening of the blood must be done to find any presence of the drug. There's a screening process and a preliminary process. **REP. BROOKE** asked if this will be an increased cost to the crime lab function. **Dr. Lively** said that, answering only with regard to the laboratories, they would be using very similar techniques to what they

currently use. Cost increase would depend on the law enforcement that does occur.

REP. BROWN asked **Mr. Fleiner** what other tests might be given. **Mr. Fleiner** said that a peace officer should be able to determine in the initial investigation stage whether the driver is driving under the influence of alcohol, illegal substances, prescribed medication, or an illness which the driver, at that time, had no control over. If the driver isn't able to give the information, an attorney, physician or family member will be contacted to verify that the officer's information is correct.

REP. BROWN noted that the Senate had language in the 1991 session that, essentially, said, "A drug test may be performed under this section only if the arresting officer has reasonable grounds to believe the person to have been driving (in actual, physical control of the vehicle) under the influence of drugs or a combination of alcohol and drugs or if a test with the presence of alcohol as the results of the arresting officer, possessing reasonable grounds to believe the person had been driving." **REP. BROWN** asked **Mr. Fleiner** if this was reasonable to add to the bill, as it adds more discriminatory ability. **Dr. Lively** emphasized that the person stopped must be very quick to point out to the officer what drugs that person may be on, and the officer should be able to follow that up. But if the officer takes that information on face value, and lets that person go on driving, then there could be serious consequences.

Closing by Sponsor: None.

HEARING ON HB 468

Opening Statement by Sponsor:

REP. JIM RICE, House District 43, Helena, said that the Montana prison system is very crowded and that corrections systems nationwide are recognizing that prison space is limited, extremely expensive, and it must prove whether inmates should even be incarcerated. Alternatives to state prison incarceration are now being proposed and developed, such as pre-release centers, halfway houses, and rehabilitation centers with intense supervision. The present sentencing statute makes it difficult to use these alternatives, if the judge is going to order confinement. This bill will encourage judges to sentence to the Department of Corrections and let the Department analyze whether any alternatives to the state prison may be incorporated.

If a judge has a good reason to send a person to a state prison, he must state good reason in court. Judges may not be as well-versed and available as the Department of Corrections is to supervise these programs.

Closing by Sponsor: None.

EXECUTIVE ACTION ON HB 468

Motion: REP. WYATT MOVED HB 468 DO PASS.

Discussion:

REP. BROWN said he will vote no on HB 468 because the bill is not limited to non-violent felony offenders; it includes anybody sentenced.

REP. VOGEL said he has come to realize over the past six months the tremendous burden on institutions and the attempts to alleviate some of the costs and problems. He thinks judges are responsible enough to keep those defenders where they belong, but this bill does give them some discretion. REP. VOGEL believes this bill would relieve some current and future problems.

REP. BIRD discussed a letter (EXHIBIT 5) from Correctional Sergeant Ron Paull, President, Federation of Montana State Prison Employees stating that, as a result of this legislation, the prison wants to "hold high security inmates in the building with sheet rock, which are not concrete, walls that were designed for low or medium security inmates." REP. BIRD said she wondered if that would cause a liability suit.

REP. RICE said that Mr. Paull is accusing James (Mickey) Gamble, Administrator, State Corrections Division, of bringing Wyoming's experimental concept of "community corrections" to Montana. This is not something new; Montana has been working on programs such as this for years. It is recognized that the prison system has to move in this direction. Prisoners' problems must be addressed rather than using jail as the only alternative. REP. RICE said he believes the state needs the flexibility to get the offenders into the appropriate alternative.

Vote: HB 468 DO PASS. Motion carried 16-1. REP. RUSSELL was excused from voting and REP. BROWN voted no.

EXECUTIVE ACTION ON HB 429

Motion/Vote: REP. WYATT MOVED HB 429 DO PASS. Motion carried 15-2. REP. RUSSELL was excused from voting, and REPS. BROWN and BROOKE voted no.

EXECUTIVE ACTION ON HB 483

Motion: REP. TOOLE MOVED HB 483 DO PASS.

Motion/Vote: REP. TOOLE moved to adopt the amendments. EXHIBIT

4 The motion carried 13-4 with **REPS. BROWN, SAYLES, WHALEN** and **WYATT** voting no. **REP. RUSSELL** was excused from voting.

Discussion:

REP. WHALEN expressed concern about the bill as amended. He said that the amendments will add the word "drug" to the implied consent statute. He would like an amendment added that would indicate that a person must take a blood test.

MOTION: **REP. BROWN** moved that, on page 5, line 7, after "admissible," a period be inserted after admissible, and "A possible test result may not in itself prove that the person was under the influence of that drug at the time he was in control of the motor vehicle." be added.

The Committee adjourned for lunch and to meet on the floor. Executive Action was continued to February 13, 1993.

ADJOURNMENT

Adjournment: 12:00 p.m.

Russell Fagg
REP. RUSSELL FAGG, Chairman

Beth Miksche
BETH MIKSCHE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 2-4-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell			✓
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

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EXHIBIT #4
DATE 2-11-93
SB HB 483

Amendments to House Bill No. 483
First Reading Copy
Prepared by the Department of Justice
February 10, 1993

1. Page 1, line 21.
Following: "alcohol"
Insert: "or drugs"

2. Page 5, line 5.
Following: "alcohol"
Insert: "or drugs"

3. Page 6, line 21.
Following: "alcohol"
Insert: "or drugs"

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO HB 483

DATE Feb. 11, 1993 SPONSOR(S) D. Toole

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Peter Funk	Dept. of Justice	X	
Bill Ware, Chief	Mt. Asso of Chiefs of Police	✓	
G. Lee Meltzer	Dept. of Justice (For. Sei)	✓	
Phil Lively	Dept of Justice (For Sei)	✓	
Craig L. Hoppe	MT Magistrates Assn	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

requiring the Department of Corrections and Human Services to develop and administer a pathological gambling treatment program; defining services to be provided by the program.

Terry Cohea, Legislative Fiscal Analyst, explained the amendments, EXHIBIT 4.

Motion/Vote: REP. WANZENRIED moved amendments to HB 531, EXHIBIT 4. Motion carried unanimously.

Motion:: REP. WANZENRIED MOVED HB 531 DO PASS AS AMENDED.

Motion/Vote: REP. GRADY MADE A SUBSTITUTE MOTION TO TABLE HB 531. Motion carried with Reps. Royal Johnson, Quilici and Wanzenried voting no.

EXECUTIVE ACTION ON HB 227

Sponsor: REP. TOOLE explained the bill. An Act generally revising the disclosure of conflict of interest and financial reporting requirements for State Officers and Legislators requiring disclosure of a conflict of interest;

Fiscal Note Assumptions: Secretary of State's Office 1) Functions transferred to the Commissioner of Political Practices are not currently being performed by the Secretary of State's Office due to a district court ruling specifically prohibiting the Secretary of State from administering the ethics laws. 2) No funds are currently appropriated to or expended by the Secretary of State's Office in this regard.

Commissioner of Political Practices
3) An additional 1.00 FTE (Grade 14 executive assistant) will be required to meet the ethics enforcement workload created under the bill.
4) Preparation and publishing of an interpretive guide covering ethics and conflict of interest requirements will require printing and development expenses. Required investigations may involve some travel and legal expenses.
5) Administrative rulemaking will be necessary with attendant expenses for filing fees, rule hearings, transcripts, legal services, and printing.
6) Office furniture and equipment for the additional staff will be purchased in FY 94.
7) The commissioner may impose civil penalties not to exceed $500 for each violator under this bill. The impact on revenue is not subject to reasonable estimate.

Motion/Vote: REP. FISHER MOVED HB 227 BE TABLED. Motion carried 14 - 4 with Reps. Bardanouve, Kadas, Menahan and Wiseman voting no.

EXECUTIVE ACTION ON HB 483

Sponsor: REP. TOOLE explained the bill. **An Act providing that a person operating a vehicle upon the ways of the state open to the public consents to more than one test for the presence of alcohol or drugs; providing that an alcohol test be given first and that a drug test may not be given if the alcohol test is failed.** EXHIBIT 5 was handed out.

Motion/Vote: **REP. ROYAL JOHNSON MOVED HB 483 BE TABLED. Motion carried 12 - 6 with Reps. Bardanouve, John Johnson, Nelson, Quilici, Wanzenried and Zook voting no.**

EXECUTIVE ACTION ON HB 100

Sponsor: REP. DAVIS explained the bill. **An Act requiring the Department of Transportation to designate turnouts on state two-lane highways for slow-moving vehicles.**

Discussion: **REP. DAVIS** said the reason this bill came about is because the Montana Highway Patrol cannot legally arrest or stop a slow-moving vehicle because the slow-moving vehicle turnoffs are not marked. If the bill is passed and signs are put up, and that slow-moving vehicle fails to pull over and allow more that four vehicles to pass, it is in violation of the law.

REP. DeBRUYCKER said this state has "slow moving vehicles stay right" but some other states will have "all vehicles stay to the right, the inside lane is for passing". If the signs were changed would that do what your bill is trying to do? **REP. DAVIS** said if they had a three-laner or, at least a place designated for passing as on the West Short of Flathead Lake, but the law says only a two-lane.

REP. FISHER said she understood the driver had to pull over if there was a place. Highway 93, between Whitefish and Kalispell, has a space, and she doesn't know how you could designate the whole 15-mile strip or why a sign has to be posted. **REP. DAVIS** said that causes frustration to the Montana Highway Patrol. There is an existing law.

Motion/Vote: **REP. KASTEN MOVED HB 100 BE TABLED. Motion carried 13 - 5 with Reps. Bardanouve, Kadas, Menahan, Quilici and Wanzenried voting no.**

EXECUTIVE ACTION ON HB 568

Sponsor: **REP. KNOX - An Act diverting money from the coal severance tax permanent fund to the capital projects fund for deferred maintenance of state buildings.**

Motion: **REP. MENAHAN moved HB 568 DO PASS**

Discussion: **Ms. Cohea** referred to the Fiscal Impact sheet and said during the 1995 biennium it has a 0 impact on the general fund and SEA. It takes interest away from the SEA but an equal

HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL VOTE

DATE 3/3/93 pm BILL NO. HB 483 NUMBER

MOTION: Rep. Royal Johnson moved to Table HB 483

Motion carried 12 - 6

NAME	AYE	NO
REP. ED GRADY, V. CHAIR	X	
REP. FRANCIS BARDANOUVE		X
REP. ERNEST BERGSAGEL	X	
REP. JOHN COBB	X	
REP. ROGER DEBRUYKER	X	
REP. MARJ. FISHER	X	
REP. JOHN JOHNSON		X
REP. ROYAL JOHNSON	X	
REP. MIKE KADAS	X	
REP. BETTY LOU KASTEN	X	
REP. WM. RED MENAHAN	X	
REP. LINDA NELSON		X
REP. RAY PECK	X	
REP. MARY LOU PETERSON	X	
REP. JOE QUILICI		X
REP. DAVE WANZENRIED		X
REP. BILL WISEMAN	X	
REP. TOM ZOOK, CHAIR		X
	12	6

EXECUTIVE ACTION ON HB 586

Motion/Vote: REP. WISEMAN MOVED HB 586 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 601

Motion: REP. BERGSAGEL MOVED HB 601 BE TABLED. Motion failed on a tie vote with REPS. COBB, FISHER, KADAS, MENAHAN, PECK, PETERSON, QUILICI, WANZENRIED and WISEMAN voting no.

EXECUTIVE ACTION ON HB 483

Motion: REP. ROYAL JOHNSON MOVED TO RECONSIDER HB 483 AND TAKE FROM THE TABLE. Motion carried 14 to 4 with REPS. DeBRUYCKER, KASTEN, QUILICI, and WANZENRIED voting no.

Motion/Vote: REP. ROYAL JOHNSON MOVED HB 483 DO PASS.

Discussion: REP. GRADY asked Ms. Cohea whether there was any funding associated with the bill. Ms. Cohea responded no fiscal note had been prepared. She recalled REP. TOOLE had distributed a letter from the Forensic Division stating the cost of supplies under the bill was approximately $3,000. She recalled committee discussion that the forensic lab's budget was $2 million per year, and discussion from the forensic lab that they would absorb the cost of the bill in their existing budget.

Vote: HB 483 DO PASS. Motion carried 13 to 5 with REPS. BERGSAGEL, DeBRUYCKER, KADAS, KASTEN, and QUILICI voting no.

EXECUTIVE ACTION ON HB 660

Motion: REP. PETERSON MOVED HB 660 DO PASS.

Discussion: CHAIRMAN ZOOK asked Ms. Cohea to address the fiscal note. Ms. Cohea reported the committee had appropriated $500,000 in HB 2 from the UI Admin tax for the biennium. She said the bill would require about $110,000 per year in administrative costs for the program.

REP. PETERSON suggested there was some anxiety about the administrative costs. She said some of the costs, other than the 1.5 FTE, would be due to telephone calls to coordinate efforts. She said the fiscal note outlined some of the activities by departments which would be included in the program. Ms. Cohea detailed the administrative costs considered by the subcommittee: personal services - 48,000 per year; advisory council - $20,000 per year; operating expenses - $34,000 per year; equipment - $8,300 for first year of the biennium.

HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL DATE 3/12/93 P.m.

NAME	PRESENT	ABSENT	EXCUSED
Rep. Ed Grady, V. Chair	✓		
Rep. Francis Bardanouve	✓		
Rep. Ernest Bergsagel	✓		
Rep. John Cobb	✓		
Rep. Roger DeBruyker	✓		
Rep. Marj. Fisher	✓		
Rep. John Johnson	✓		
Rep. Royal Johnson	✓		
Rep. Mike Kadas	✓		
Rep. Betty Lou Kasten	✓		
Rep. Wm. "Red" Menehan	✓		
Rep. Linda Nelson	✓		
Rep. Ray Peck	✓		
Rep. Mary Lou Peterson	✓		
Rep. Joe Quilici	✓		
Rep. Dave Wanzenreid	✓		
Rep. Bill Wiseman	✓		
Rep. Tom Zook, Chair	✓		

HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL VOTE

DATE 3/12/93 pm BILL NO. HB 483 NUMBER

MOTION: Rep. Royal Johnson moved HB 483 off the Table.

Motion carried 14 - 4

NAME	AYE	NO
REP. ED GRADY, V. CHAIR	X	
REP. FRANCIS BARDANOUVE	X	
REP. ERNEST BERGSAGEL	X	
REP. JOHN COBB	X	
REP. ROGER DEBRUYKER		X
REP. MARJ. FISHER	X	
REP. JOHN JOHNSON	X	
REP. ROYAL JOHNSON	X	
REP. MIKE KADAS	X	
REP. BETTY LOU KASTEN		X
REP. WM. RED MENAHAN	X	
REP. LINDA NELSON	X	
REP. RAY PECK	X	
REP. MARY LOU PETERSON	X	
REP. JOE QUILICI		X
REP. DAVE WANZENRIED		X
REP. BILL WISEMAN	X	
REP. TOM ZOOK, CHAIR	X	
	14	4

HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL VOTE

DATE 3/12/93 pm BILL NO. HB 483 NUMBER

MOTION: Rep. Royal Johnson moved HB 483 DO PASS.

Motion carried 13 - 5

NAME	AYE	NO
REP. ED GRADY, V. CHAIR	X	
REP. FRANCIS BARDANOUVE	X	
REP. ERNEST BERGSAGEL		X
REP. JOHN COBB	X	
REP. ROGER DEBRUYKER		X
REP. MARJ. FISHER	X	
REP. JOHN JOHNSON	X	
REP. ROYAL JOHNSON	X	
REP. MIKE KADAS		X
REP. BETTY LOU KASTEN	X	X
REP. WM. RED MENAHAN	X	
REP. LINDA NELSON	X	
REP. RAY PECK	X	
REP. MARY LOU PETERSON	X	
REP. JOE QUILICI		X
REP. DAVE WANZENRIED	X	
REP. BILL WISEMAN	X	
REP. TOM ZOOK, CHAIR	X	
	13	5

HOUSE STANDING COMMITTEE REPORT

March 15, 1993

Mr. Speaker: We, the committee on Appropriations report that House Bill 483 (first reading copy -- white) do pass .

Signed: Tom Zook

Tom Zook, Chair

Committee Vote:
Yes ~~17~~ 12 No ~~5~~ 5.

581508SC.Hpf

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON HIGHWAYS & TRANSPORTATION

Call to Order: By Senator Cecil Weeding, Chair, on April 6, 1993, at 3:11 p.m.

ROLL CALL

Members Present:
Sen. Cecil Weeding, Chair (D)
Sen. Betty Bruski-Maus, Vice Chair (D)
Sen. Francis Koehnke (D)
Sen. Doc Rea (D)
Sen. Spook Stang (D)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Daryl Toews (R)
Sen. Larry Tveit (R)

Members Excused: Sen. Harp

Members Absent: None.

Staff Present: Tom Gomez, Legislative Council
Beth Satre, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 483, HB 679
Executive Action: HB 483, HB 679

HEARING ON HOUSE BILL 483

Opening Statement by Sponsor:
Rep. Toole, House District 60, stated law enforcement has placed a high priority on the concept embodied in HB 483, which evolved as a result of a cooperative effort between local law enforcement and the crime lab in Missoula. He explained HB 483 would allow law enforcement officials to request that a driver submit to a drug test when that driver has less than a .10 blood alcohol count (BAC) but there is cause to suspect that person is under the influence of drugs. Since people with blood alcohol levels over .10 are already in violation of Montana's driving under the influence (DUI) statute, **Rep. Toole** said HB 483 would authorize this additional test be administrated to only those people who evidence a legal BAC when drug-use is suspected. He said this

provision would limit the number of drug tests and thereby reduce the costs associated with HB 483.

Rep. Toole said that HB 483 would have no impact on the General Fund; in the usual case the drawing and preserving of the blood sample would be done by a hospital and those costs will be borne by local law enforcement. He said the crime lab in Missoula had clearly indicated its existing budget could absorb all the costs it expected to incur if HB 483 were adopted. He emphasized that the crime lab would request no additional funds in connection with HB 483. **Rep. Toole** stated officers currently have little recourse when obviously impaired motorists do not have an illegal BAC. He said such motorists are frequently released, even though they are driving erratically. He stated such cases occur often enough to pose a problem, and concluded that law enforcement had convinced him that the provisions contained in HB 483 would be a good way to address this problem.

Proponents' Testimony:

John Connor, Prosecutor, Department of Justice, said that law enforcement supports the concept embodied in HB 483 because MCA 61-8-401, the DUI offense statute, makes it a crime to drive a motor vehicle while under the influence of drugs as well as alcohol. He stated the Implied Consent Law contains provisions regarding testing for the presence of alcohol, but not for drugs. He said this leaves law enforcement without a means of statutorily addressing the offense of driving under the influence of drugs. According to **John Connor,** HB 483 would add only a "very limited type of testing" for drugs to the Implied Consent Law. He stated no one would be subjected to the drug test unless the officer involved had already had probable cause that the motorist was, in fact, driving under the influence of drugs. **Mr. Connor** reiterated **Rep. Toole's** assurances that the administrators of the state crime lab in Missoula believe the required testing can be done within existing appropriations. **Mr. Connor** concluded that HB 483 would give law enforcement a tool to address the DUI offense in both the forms proscribed in MCA 61-8-401 at no additional cost to the state.

Craig Hoppe, Montana Magistrates Association, expressed his organization's support of HB 483. He stated HB 483 represents an effort to close the loophole in the Implied Consent Law. He added that a mechanism is needed to test those drivers who are impaired but are not consuming alcohol.

Glenna Wortman-Obie, Public Relations & Traffic Safety Manager, AAA Montana, and Chair, Stop Montana DUI Task Force, expressed the support of both organizations for HB 483.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:
SEN. SWYSGOOD stated he found it hard to believe that law enforcement could absorb all the costs associated with HB 483 within their already tight budgets. **Rep. Toole** said he had received letter from the state crime lab in Missoula in which the maximum material costs associated with HB 483 were estimated at about $2,500. He stated the crime lab had, in the same letter, clearly expressed its willingness to absorb those costs at its current level of funding. He offered to supply the Committee with copies of that correspondence at a later date.

SEN. SWYSGOOD expressed his concern that HB 483 might lead to the testing of most people who are pulled over on suspicion of drunk driving but are not legally drunk. **Rep. Toole** responded he did not believe that the authority granted in HB 483 would be abused. He outlined the two reasons why he thought HB 483 would be self-limiting. First, the officer would need to have probable cause to stop a car and place the driver under arrest. If no probable cause existed, **Rep. Toole** stated an officer who makes an arrest, administers a breath test and then requests a drug test which has negative results could possibly be charged with harassment. Second, under the provisions of HB 483, local law enforcement would assume the hospital costs associated with having the blood drawn and preserved for transportation to the state crime lab in Missoula. **Rep. Toole** said he believed that local law enforcement personnel would want to ensure that those costs are justified.

SEN. SWYSGOOD said, as a laymen, he would assume that an officer who had stopped a motorist would already have established probable cause. He explained the officer would have had grounds to suspect that something was wrong, and when an acceptable BAC test disproved the first possibility, the next logical step would be to request a drug test. **SEN. SWYSGOOD** stated under the provisions of HB 483, a drivers could be subjected to two tests whereby refusal of either would result in the suspension of their driver's licenses. He asked what would happen if a driver was on medication which would result in a positive test, but would not necessarily establish proof of DUI.

Rep. Toole responded that circumstances in which people are using drugs prescribed by a doctor are certainly different than circumstances in which people are using illegal and dangerous drugs. He stated, however, HB 483 and the statutory offense of DUI places emphasis on whether a motorist is driving impaired. He emphasized that drivers who are impaired by their prescribed medications are also guilty of the DUI offence. He explained that currently law enforcement has a problem obtaining proof in cases where the driving impairment is a result of drugs. He said in many such instances where prescription drugs are involved, people would voluntarily acknowledge that they were under medication so that additional testing would not be necessary.

John Connor reminded the Committee that submitting to a test under the Implied Consent Law was optional; people can refuse, an

action which could result in a suspension of their driver's licenses. He added that people who do refuse have the right to appeal the suspension of their driver's licenses in district court and a hearing must be held within 30 days on the issue of whether or not their license was properly suspended. Drawing on his six years of experience as a county attorney, **John Connor** said he did not believe that the authority to request a drug test would be abused. He stated that, in fact, the opposite would be true; the tests would not be routinely requested after a driver has not evidenced an illegal BAC because such tests would require a considerable amount of effort on the part of local law enforcement and would raise the specter of potential liability if an officer is acting inappropriately.

John Connor stated his belief that HB 483 would have only a limited application, for example, in instances where a driver has not been consuming alcohol but is driving in an erratic manner and acts very erratic when stopped by an officer. He said HB 483 would address such a situation and give the officer some legal recourse when the driver is obviously drug impaired. He explained that there is currently no way to pursue any legal action in such cases. He said he did not believe that the authority granted by HB 483 would be used in instances where there is a less than .10 intoxilizer result and the person is not acting in a very erratic fashion.

SEN. TVEIT cited HB 483, page five, lines seven through 15 where it reads a "positive test on drugs results in itself that a person is under the influence at the time, a person may not be convicted of a violation unless there is other competent evidence". He asked that the definition of "other competent evidence" be clarified.

John Connor said "other competent evidence" might be constituted by the presence of a marijuana or hash pipe in the car, by very erratic driving, crossing back and forth across the center line, and erratic behavior when the officer examines the situation, or perhaps possession of drugs.

SEN. KOEHNKE asked how long drugs remain in a person's blood system. He said in some instances it might take the officer quite a while to get the person to a hospital to have the blood drawn. **John Connor** said he thought it would depend on the drug and the dose. He explained if the drug involved is, for example, a methamphetamine and the dose is relatively small, that drug would wear off pretty quickly. He added that a hallucinogenic which had been used for a longer period of time would have a longer effect.

SEN. SWYSGOOD asked what would happen to a person who has been prescribed medication which should not be used in conjunction with alcohol, but who either forgets or does not believe the warning label, has a beer, gets stopped, and tests negative on the BAC test, but positive on the drug test. **John Connor** said,

in such a situation, a driver would probably inform the officer as to the nature of the drug. He said if the officer chooses to disregard that information and the driver submits to a drug test, the test would indicate the nature of the substance. Given such a situation as a prosecutor, **John Connor** indicated if such a person were issued a DUI ticket and the investigation showed or it was proven that the person had ingested a prescription drug, had a BAC of less than .10 and there was no further evidence of drugs, he would not prosecute.

SEN. TVEIT said the provisions in the Implied Consent Law include both alcohol and drugs and that a person could refuse to consent to either test. He asked what penalty that person would incur. **John Connor** said people lose their driver's license for 60 days if they refuse to take a test under the Implied Consent Law. He added that statute indicates that individuals have the right to appeal that suspension to district court and the case must be heard within 30 days of the filing date.

SEN. TVEIT stated if Governor Racicot signs HB 157, which would require drivers to forfeit their vehicle after their third DUI offense, people would not so readily consent to either the alcohol or drug test. **John Connor** replied that most people consent to the tests, but agreed the result of HB 157 becoming law might be an increase in the number of appeals submitted to district court.

CHAIRMAN WEEDING asked if the intent of HB 483 was to establish the policy that if drivers are over the legal limit of alcohol consumption they will be presumed to be driving under the influence of alcohol and not drugs regardless of other drug intake. **Rep. Toole** replied, yes, if sufficient evidence to convict a driver of the offense of driving under the influence of alcohol is present. He said most people plead guilty if they are above the legal limit, and those who do not, usually lose in court. **Rep. Toole** stated he believed the Implied Consent Law embodies a sort of challenge to the Fifth Amendment privilege against self incrimination, because people are compelled to do something which will prove or disprove their guilt of a particular offense. He said the courts have held that it is not, but added he still considers there to be some tension. He stated he shared **SEN. SWYSGOOD's** concerns when the concept behind HB 483 initially presented to him, and the language **CHAIRMAN WEEDING** had cited arose from those concerns.

CHAIRMAN WEEDING asked if he correctly understood that under HB 483 an individual could not be convicted of driving under the influence of both alcohol and drugs. **Rep. Toole** replied the possibility of proving drugs would still exist if that could be proven with independent means even when an individual is in excess of the .10 limit. He added that could pose a double jeopardy issue.

SEN. TVEIT said if people submit to a BAC test and test over the legal limit, but have drugs on their person, they would certainly be charged with possession. **John Connor** stated the possession charge would be a separate offense.

SEN. SWYSGOOD read from page two "if a test shows an alcohol concentration of higher than .10 or more, a test for drugs may not be given". He stated that language does not say the test will not be given. **Rep. Toole** replied if that section is ambiguous, it was not intentional. He stated the intent of HB 483 is to provide that if the alcohol concentration result is .10 or over, an additional test for drugs is not allowed. He said he would agree to an amendment in order to make that stipulation clear.

CHAIRMAN WEEDING stated the Legislative Council has defined "may" and "shall" and requested that **Tom Gomez** clarify the intent of the language in HB 483. **Tom Gomez** said the use of "may not" in the cited instance, means that an additional test would be prohibited in cases where a person has a BAC of .10 or more. **CHAIRMAN WEEDING** stated he also felt the "may" seems permissive, but added in legalese it was not.

SEN. SWYSGOOD asked which offense would carry the stiffer penalty, driving under the influence of alcohol or of drugs. **Rep. Toole** replied the two offenses are both considered DUI and not separate offenses.

SEN. SWYSGOOD asked if positive results of a drug test would give a law enforcement officer the right to search the vehicle for possible possession of drugs, an offense which carries a stiffer penalty than the DUI. **Rep. Toole** replied the standard for probable cause for a search is different than that for an arrest. He explained probable cause for a search is only established when there is reason to believe that contraband will be found at the location. He said a person who has ingested drugs at some other place and driven away would not have any drugs in the car, and added probable cause to search that vehicle would not exist because there would be no reason to assume that the drugs would be in the car.

SEN. SWYSGOOD said if a person were given a drug test and the result was positive, the officer would have no way of knowing where the person took those drugs. He asked if the officer would have just cause to search the vehicle. **John Connor** said practically speaking, the officer would not know the results of the test until some time after that person was stopped and the test was administered. He added that by that time the defendant would be probably long gone. He stated just the driving of the car itself and the test results would not provide in any way probable cause to search the car; there would have to be something more. As an example, **John Connor** said if a pipe which smelled as though it had been used for marijuana was found in the car, the person's behavior was very erratic, and the person had

less than a .10 BAC, the officer might want to see if that evidence would convince a judge to allow a search of the car.

Closing by Sponsor:
Rep. Toole reiterated that initially he had the same reservations about expanding mandatory testing in this area as expressed by members of the Committee. He stated there are people who operate vehicles in Montana under the influence of drugs, not because drugs other than alcohol are their particular choice, but because it is much more difficult for an officer to obtain a conviction for DUI. He said HB 483 presents a limited avenue to solving that problem.

HEARING ON HOUSE BILL 679

Opening Statement by Sponsor:
Rep. Clark, House District 31, explained HB 679 has two purposes, one of which is changing some of the rules regarding the operation of motor vehicles especially on Forest Service (FS) and Bureau of Land Management (BLM) lands. He stated HB 679's other purpose would provide a way to recover some of the federal highway funds Montana will lose as a result of the death of SB 365, the mandatory motorcycle helmet law. He said a substantial portion of that money will be recovered through the federal highway safety program which **Al Goke** administers. **Rep. Clark** said **Mr. Goke** was present to answer any questions the Committee might have about the money but did not intend to testify on HB 679.

Proponents' Testimony:
Doug Abelin, Capitol Trail Vehicle Riders Association (CTVRA) and Montana Trail Vehicle Riders Association (MTVRA), distributed a packet containing the documents his group had used in developing HB 679 and the concept embodied in the bill (Exhibit #1). He said HB 679 had evolved during the course of this legislative session, and mentioned he had presented the ideas incorporated into HB 679 to the Committee on February 20, 1993. He admitted HB 679 still needs some work but would ultimately be beneficial for both the users and the agencies involved. He stated his organization had spent a lot of time developing an agenda, had made a sincere effort to discuss the pertinent issues with the involved agencies, and had received much support from committees and members of the legislature. According to **Doug Abelin**, HB 679 would identify certain levels of forest road for off-highway vehicle (OHV) operation, would address OHV crossing of roadways in the safest possible manner, and would establish liability language making users responsible for their own actions in almost all cases. He stated HB 679 would create the groundwork for a "tremendous safety program" for OHV operators in Montana. He said Fish, Wildlife & Parks (FWP) would administer this program which would teach safety, riding courtesy to all users, environmental awareness and mitigation, and the use of all safety gear.

were stricken. He asked what HB 679's proponents hoped to accomplish with these two sections.

Bob Walker replied no room for discussion on this issue exists because the FS's usual response is simply that state law does not allow OHV use on maintenance level roads. He said HB 679 would adjust state law to allow for at least a dialogue on the issue, even though the FS would still make the final decision. He stated the FS may not open up many roadways to OHV use, but HB 679 would at least make that a possibility. **Bob Walker** also emphasized the connection between the safety program and the ability to use OHVs on level three roads; minors would be required to take the safety education class before they could operate on the particular roadways identified in HB 679. He said a voluntary program would currently attract only a small number of participants, but added if OHV users needed that safety training program to use designated FS roads to access trails the scope of the program would radically expand.

Closing by Sponsor:
Rep. Clark said HB 679 is not perfect and expressed the willingness of the bill's sponsors to work with any one concerned with any portion of the bill. He stated BLM supports HB 679 in its current form. He stressed that HB 679 would not suspend or mandate a change in federal policy but would alter state law so that negotiations could to go forward with the FS. In response to the argument an unsafe situation would be created by allowing unlicensed operators to ride OHVs on the same roads as logging trucks, **Rep. Clark** replied that particular unsafe situation is already a reality. He said HB 679 would require unlicensed operators to pass a safety training course, be under direct adult supervision, and follow other general safety rules adapted from the snowmobile statute. He said HB 679 would also encourage and hopefully cause minors to wear helmets.

Rep. Clark stated he did not think HB 679 would jeopardize the current cooperative agreements between state and county law enforcement agencies and the FS. He informed the Committee that **Colonel Griffith, Montana Highway Patrol,** had attended the House hearing on HB 679 with the express purpose of answering any questions about HB 679's potential consequences for those cooperative agreements. **Rep. Clark** stated that **Colonel Griffith** had not expressed any concerns about HB 679. **Rep. Clark** closed by saying the safety issue addressed by HB 679 is paramount. He said the safety education training program contained in HB 679 would institute would reach young OHV riders in Montana and help them develop safety habits applicable to both off and on-road motoring.

EXECUTIVE ACTION ON HOUSE BILL 483

Motion:
SEN. TVEIT moved HB 483 BE CONCURRED IN.

Discussion:
SEN. SWYSGOOD said he understood the concept embodied in HB 483 and did not condone mixing either alcohol or drugs with driving. He disagreed, however, with the solution to the problem which HB 483 presented. He said the provisions in HB 483 allow for the potential of abuse on the part of law enforcement officers and would represent one more infringement upon an individual's rights. He said he wished HB 483 could be amended to remove that potential for abuse, but added he did not believe there was enough time given the "late stage in the game". He stated he did not understand how HB 483 had entered the Committee so late in the session, since it would neither generate nor expend any revenue.

SEN. REA requested clarification as to why HB 483 provided that the drug test could be used only to establish the offense of driving under the influence of drugs. **SEN. MCCLERNAN** explained the officer would need to have further evidence reinforcing the suggestion that the person was actually on illegal drugs for a charge to be made on that account.

SEN. SWYSGOOD added the possibility existed that the driver could be on medication and test positive. He stated a positive result would not positively prove that the driver was actually under the influence of the drug. He noted, however, some of the information which came out during the hearing indicated that the officer could still request the drug test even after being informed about the driver's medication. He said if the driver then tests positive, the case would have to be appealed to District Court or the officer would have to establish more substantial proof.

SEN. BRUSKI-MAUS said the testimony had indicated if drug paraphernalia were present, the officer would be more suspicious and more apt to want the test.

SEN. TVEIT commented that HB 483 would definitely broaden the authority of law enforcement officers. He said if the driver is erratic but does not exhibit an illegal BAC, the officer could immediately request a drug test.

SEN. SWYSGOOD stated that was his primary concern. He explained if a driver tests .08, which is just under the legal criteria for being DUI, that driver could be a little erratic. He stated HB 483 would give the law enforcement officer the option to take the driver in for a drug test. He stated if the drug test is positive, even if it is a prescription drug, the onus is on the driver to prove the nature of that drug at personal expense. He stated he believes HB 483 would increase the potential for harassment.

SEN. MCCLERNAN commented that operating a vehicle under the influence of drugs is currently against the law. He said that **Rep. Toole** had argued that HB 483 was necessary because law

enforcement officers do not have the authority to check for drugs. **SEN. MCCLERNAN** stated that although he could sympathize with law enforcement's need to have authority to check for drugs, he would be inclined to give them only limited authority.

SEN. TVEIT said HB 483 would give law enforcement officers the option to check drivers for drug use even though they are stopping them for a DUI, not for drugs on any public road.

SEN. KOEHNKE asked what kind of authority law enforcement officers currently have to check for drug use. **SEN. SWYSGOOD** explained that the employees of commercial motor carriers can be checked randomly for drug use and the driver of a vehicle involved in an accident must submit to a drug test within 32 hours. He stated that non-commercial drivers are not subject to any of the commercial restrictions. **SEN. SWYSGOOD** stated a drug test attached to the Informed Consent Law would be guaranteed to be used quite often. He concluded it would provide law enforcement officers with another option to harass private citizens.

SEN. TVEIT stated the more he considered the subject matter and possible consequences of HB 483, the less he liked the bill. He then WITHDREW his motion that HB 483 BE CONCURRED IN.

Motion/Vote:
SEN. SWYSGOOD moved TO TABLE HB 483. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HOUSE BILL 679

Discussion:
SEN. TVEIT cited page six, lines 3-8 and said he could not support amending Montana statute to grant OHV users permission to operate on all level three maintenance roads. He said the FS could probably adopt rules limiting the use to certain stretches, but added it would be better if state law also reflected that limitation.

SEN. SWYSGOOD said language tying section four, subsection five to section one was necessary because HB 679, in its current form, provides that OHV users can operate on a level three maintenance road without any FS interjection. He stated section one provides that exceptions to the regulations are permitted only at the determination and discretion of the United States FS when the following conditions are met: that use is authorized by the forest supervisor, that stretch of road is properly signed, the OHV has a valid registration.

SEN. TVEIT stated he believed the language suggested by **SEN. SWYSGOOD** was very important. He said the regulations should

ROLL CALL

SENATE COMMITTEE Highways & Transport DATE April 6, 1993

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CECIL WEEDING, CHAIR	X		
SENATOR BETTY BRUSKI-MAUS, V-CHAIR	X		
SENATOR DARYL TOEWS	X - late		~~X~~
SENATOR JOHN HARP			X
SENATOR FRANCIS KOEHNKE	X		
SENATOR JACK "DOC" RIEA	X		
SENATOR LARRY TUELL	X		
SENATOR CHARLES SYLVSGOOD	X		
SENATOR BARRY "SPOOK" STANG	X		
SENATOR HENRY McCUERNAN	X		

FC8

Attach to each day's minutes

DATE 4/6

SENATE COMMITTEE ON Highways

BILLS BEING HEARD TODAY: HB 679 HB 483

Name	Representing	Bill No.	Check One Support	Oppose
DAL Smilie	AMA	HB 679	✓	
Glenna Wortman-Obrie	AAA Montana	HB483	←	
Connie Nixon	Forest Service	HB 679		✓
John Connor	Dept of Justice	HB483	←	
Craig L. Hoppe	MT Magistrates Assn	HB 483	✗	
Liz Ledman	FWP	HB679	✓	
Anna Olsen	FWP	"	✓	
Pat Foley	MTVRA/CTVA	HB679	✓	
Doug ABELIN	MTVRA/CTVA	HB-679	✓	
Chris Kisbrudt	US Forest Service	HB679		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10